IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

FAO No.297 of 2004

Date of Decision : December 31, 2007

Narinder Rohal …Appellant.

Versus:

Himachal Road Transport Corporation …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant : Mr. Pt. Om Parkash Sharma, Advocate

For the respondent: None.

Sanjay Karol, J. (Oral)

In the present appeal, the appellant has assailed the award dated 14.6.2004 passed by the Sub Divisional Officer (Civil)-cum-Commissioner, Sub Division (Rural), Shimla, under the Workmen's Compensation Act (hereinafter referred to as 'the Act') in case No.10/2002 titled as Narinder Rohal vs. HRTC, dismissing the appellant's claim petition.

The appellant, an employee of the respondent, in the course of his employment suffered grievous injuries and was admitted in the Indira Gandhi Medical College, State Hospital at Shimla between 16th May and 19th May, 2000. The appellant

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

sustained injuries in his left eye while repairing the respondent's vehicle. He is admitted to be an employee of the respondent. As per Ext.PW-2/A he has been drawing salary of Rs.6808/-. He suffered permanent disability of 20% in his left eye. Accordingly, he filed a claim petition seeking statutory compensation.

The appropriate authority rejected the claim of the appellant on the ground that the appellant had not brought on record any evidence to prove that due to the reason of his disablement he experienced any difficulty in performing and discharging his duties.

The appellant admittedly suffered grievous injury during the course of his employment. The appellant was operated upon in his left eye and as per the disability certificate Ext.PW-4/A, medical discharge slip Ext.PW-3/A and statement of Dr. R. K. Gupta (PW-3), the appellant's permanent disability assessed is 20%.

In *Regional Director E.S.I. Corporation and another* vs. *Francis De Costa and another* {1996(6) SCC 1}, it has been held that the employee has to prove that ;

1) there was an accident;

2) the accident had a casual connection with the employment; and

3) the accident must have been suffered in the course of employment.

Section 3 of the Act casts a duty upon the employer to pay compensation to the employee in the event of the

employee suffering a personal injury. The compensation required to be assessed and paid has to be in accordance with the provisions of Section 4, Schedule 1 and Schedule 4 of the Act. The finding recorded by the Court below that the injury sustained by the appellant has not resulted into loss of earning capacity, in my view, is totally erroneous and not in consonance with the provisions of the law. Having come to the conclusion that an employee sustained injury in the course of his employment by virtue of an accident, the claim of the petitioner was required to be adjudicated under the Workmen's Compensation Act, 1923 and not the provisions of the Motor Vehicles Act, 1988. This is the mandate of law and the legislative intent.

For the aforesaid reasons, the impugned order is set aside and the matter is remanded back to the concerned and appropriate authority for consideration afresh only for the purposes of quantification of the compensation to be awarded. The finding of facts with regard to the appellant's having suffered an injury in the course of his employment, and his disability being 20% is not being disturbed in the present appeal and are maintained as it is. Keeping in view the time factor, the claim was instituted on 4.1.2002, in the interest of justice, it is directed that the appellant's case be decided on or before 28th February, 2008. The record be returned back immediately. The parties shall appear before the appropriate authority on 15th

January, 2008. The respondent shall pay a cost of Rs.5000/- to the appellant.

The present appeal accordingly stands disposed of.

(Sanjay Karol),
Judge.

December 31, 2007.
(*rana*)